



TESTIMONY OF THE DEPARTMENT OF THE ATTORNEY GENERAL TWENTY-EIGHTH LEGISLATURE, 2015

ON THE FOLLOWING MEASURE:

S.B. NO. 148, S.D. 1, RELATING TO NUISANCE ABATEMENT.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Friday, March 27, 2015

TIME: 3:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Laura Maeshiro, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General (Department) takes no position on this measure but provides comments.

The purpose of this measure is to include gambling among the type of offenses that are subject to nuisance abatement laws. Nuisance abatement laws authorize individuals, the State, and the counties to maintain *civil* suits against persons causing or permitting, among other things, a nuisance.

The Department has one concern that it believes the Committee should consider if this measure is to be passed. In the penal code, section 712-1231, Hawaii Revised Statutes (HRS), provides that "social gambling" is a defense to *prosecution* for gambling offenses. If gambling is added to the nuisance abatement laws as currently drafted in this bill, a defendant in a civil action, unlike a defendant in a criminal action, will not be afforded the right to raise the affirmative defense of social gambling. Section 712-1231, HRS, defines social gambling and its use as an affirmative defense to criminal prosecution as follows:

§712-1231 Social gambling; definition and specific conditions, affirmative defense. (a) Definition. "Social gambling" means gambling in which all of the following conditions are present:

- (1) Players compete on equal terms with each other; and
- (2) No player receives, or becomes entitled to receive, anything of value or any profit, directly or indirectly, other than the player's personal gambling winnings; and
- (3) No other person, corporation, unincorporated association, or entity receives or becomes entitled to receive, anything of value or any profit, directly or indirectly, from any source, including but not limited to permitting the use of premises, supplying refreshments, food, drinks, service, lodging or entertainment; and

- (4) It is not conducted or played in or at a hotel, motel, bar, nightclub, cocktail lounge, restaurant, massage parlor, billiard parlor, or any business establishment of any kind, public parks, public buildings, public beaches, school grounds, churches or any other public area; and
- (5) None of the players is below the age of majority; and
- (6) The gambling activity is not bookmaking.
- (b) Affirmative defense:
 - (1) In any prosecution for an offense described in [section] 712-1223, 712-1224, 712-1225 or 712-1226, a defendant may assert the affirmative defense that the gambling activity in question was a social gambling game as defined in [section] 712-1231(a).
 - (2) If the defendant asserts the affirmative defense, the defendant shall have the burden of going forward with evidence to prove the facts constituting such defense unless such facts are supplied by the testimony of the prosecuting witness or circumstance in such testimony, and of proving such facts by a preponderance of evidence.
 - (c) In any prosecution for an offense described in this part the fact that the gambling activity involved was other than a social gambling game shall not be an element of the offense to be proved by the prosecution in making out its prima facie case.

Without providing the affirmative defense of social gambling in a civil action, a number of unintended consequences could arise. For example, a member of the public files an abatement suit on his neighbor who holds poker games in his home or hosts sporting event parties. The person believes his neighbor and friends are betting with each other, or gambling and files a suit to abate and prevent the nuisance of gambling. Under this measure, that neighbor would not be able to assert social gambling as a defense to the abatement action.

The Department recommends the following conforming amendment that will exclude social gambling as a basis for a nuisance abatement claim:

- (d) In any suit to abate described in section 712-1271, a defendant may assert the defense that the gambling activity in question was social gambling, as defined in section 712-1231(a).

Thank you for the opportunity to testify on this measure.

MITCHELL D. ROTH
PROSECUTING ATTORNEY

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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN SUPPORT OF SENATE BILL 148, SD1

A BILL FOR AN ACT RELATING TO NUISANCE
ABATEMENT

COMMITTEE ON JUDICIARY

Rep. Karl Rhoads, Chair

Rep. Joy A. San Buenaventura, Vice Chair

Friday, March 27, 2015, 3:00 PM
State Capitol, Conference Room 325

Honorable Chair Rhoads, Vice-Chair San Buenaventura, and Members of the Committee on Judiciary, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in support of Senate Bill No. 148, SD1.

This measure includes gambling among the types of offenses that are subject to the nuisance abatement laws.

The sheer volume of money, cash in particular, that is generated by illegal gambling can lead to neighborhood and community nuisances by becoming a haven for organized crime. This Bill will supplement traditional policing by providing an additional tool to remedy illegal activity at specific buildings, premises, or places within Hawai'i.

Law enforcement has often used the nuisance abatement law to hold owners and landlords accountable for addressing known criminal activities occurring on their real property. Currently, there are no consequences for property owners to fail to take action to halt ongoing gambling activity occurring on their property. This nuisance abatement law must be amended to provide an additional course of action for law enforcement agencies to address illegal gambling activities.

The Office of the Prosecuting Attorney, County of Hawai'i supports the passage of Senate Bill No. 148, SD1. Thank you for the opportunity to testify on this matter.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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DEPUTY CHIEFS

OUR REFERENCE JK-TA

March 27, 2015

The Honorable Karl Rhoads, Chair
and Members
Committee on Judiciary
House of Representatives
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

SUBJECT: Senate Bill No. 148, S.D. 1, Relating to Nuisance Abatement

I am Jason Kawabata, Acting Major of the Narcotics/Vice Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports Senate Bill No. 148, S.D. 1, Relating to Nuisance Abatement.

Illegal gambling establishments attract other types of criminal activity, including assaults, robberies, firearms offenses, and narcotics offenses. Enforcement action is taken regularly at these illegal establishments, but it appears that when one is closed down, another one opens in its place. The passage of this bill would provide a long-term solution to a chronic problem. It would give law enforcement a necessary tool to dismantle an illegal gambling enterprise.

The HPD urges you to support Senate Bill No. 148, S.D. 1, Relating to Nuisance Abatement.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Kawabata".

Jason Kawabata, Acting Major
Narcotics/Vice Division

APPROVED:

A handwritten signature in black ink, appearing to read "Louis M. Kealoha".

Louis M. Kealoha
Chief of Police



The Public Policy Voice for the Roman Catholic Church in the State of Hawaii

HEARING: House Committee on Judiciary

SUBMITTED: March 23, 2015

TO: House Committee on Judiciary
Rep. Karl Rhoads, Chair
Rep. Joy Buenaventura, Vice Chair

FROM: Walter Yoshimitsu, Executive Director

RE: Support for SB 148 SD1 Relating to Nuisance Abatement

Honorable Chairs and members of the House Committee on Judiciary, I am Walter Yoshimitsu, **representing the Hawaii Catholic Conference**. The Hawaii Catholic Conference is the public policy voice for the Roman Catholic Church in the State of Hawaii, which under the leadership of Bishop Larry Silva, represents Roman Catholics in the State of Hawaii. We strongly support this bill that would include gambling among the types of offenses that are subject to the nuisance abatement laws.

Passage of this bill would remedy the current situation of land owners and lessors who fail to take action to stop illegal gambling at specific buildings, premises. Unfortunately, there are property owners right here in Hawaii that allow illegal activity on their properties and there are no consequences if they choose not to report them. Increasing the penalties for them will help protect our community from the social problems that stem from illegal gaming.

In sharing the Catholic theological perspective on gambling, we are very concerned about all aspects of the issue that would make specific pieces of gambling legislation acceptable. We believe that the promotion of the common good of society and the protection of individual rights should always be the primary goal of public policy. Accordingly, the potential negative consequences of an expanded “culture of gambling” needs to be carefully evaluated.

We support SB 148 because we want to make clear that gambling offenses should be included in nuisance abatement laws to protect our communities from becoming a haven for organized crime.

Mahalo for the opportunity to testify.



ONLINE TESTIMONY SUBMITTAL
House Committee on Judiciary
Hearing on Friday, March 27, 2015 @ 3:00 p.m.
Conference Room #325

DATE: March 23, 2015

TO: House Committee on Judiciary
Rep. Karl Rhoads, Chair
Rep. Joy San Buenaventura, Vice Chair

FROM: Eva Andrade, President

RE: Support for SB 148 SD1 Relating to Nuisance Abatement

Aloha and thank you for the opportunity to submit testimony in support of this measure. Hawaii Family Forum is a non-profit, pro-family education organization committed to preserving and strengthening families in Hawaii. We represent a network of various Christian Churches and denominations. We strongly support this bill that would include gambling among the types of offenses that are subject to the nuisance abatement laws.

If this bill passes, our local law enforcement will be able to hold local land owners accountable and be able to remind them of their responsibility to ensure that their property is not being used for illegal gambling and/or activity. Private citizens with concerns about their neighborhoods may also initiate legal action under this law. Illegal gambling rooms continue to hurt our communities and this bill will make it easier for law enforcement to stop crime from happening. .

We support SB 148 because we want to make clear that gambling offenses should be included in nuisance abatement laws to protect our communities from becoming a haven for organized crime. We agree that it is a great step to combat a growing problem of illegal gambling in our beautiful state.

Mahalo for the opportunity to support this measure.

Hawai'i Coalition Against Legalized Gambling

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Website hcalg.org

Member Organizations

Advocates for Consumer Rights
Animal Rights Hawaii
Buddhist Peace Fellowship
Christian Voice of Hawaii
Church of Jesus Christ of
Latter-day Saints
Church of Perfect Liberty
Disciples of Christ
Hale Kipa
Hawaii Appleseed Center
for Law & Economic Justice
Hawaii Assemblies of God
Hawaii Association of
International Buddhists
Hawaii Christian Coalition
Hawaii Conference of
Seventh-day Adventists
Hawaii Conference of the United
Church of Christ (UCC)
Hawaii District United Methodist
Church
Hawaii Family Forum
Hawaii Pacific Baptist Convention
Hawaii Rainbow Coalition
Hawaii Religions for Peace
Hawaii Youth Services Network
Honolulu Friends Meeting
Honolulu Police Department
Institute for Religion and Social
Change
The Interfaith Alliance Hawaii
Kokua Council
League of Women Voters of Hawaii
Life of the Land (Hawaii)
Dr. Martin Luther King, Jr.
Coalition Hawaii
Mestizo Association
Muslim Association & Islamic
Center of Hawaii
Pacific Gateway Center
Presbytery of the Pacific
Saints Constantine & Helen Greek
Orthodox Church
Smart Business Hawaii
Soto Zen Mission of Hawaii
Temple Emanu-El
Windward Coalition of Churches
The Woman's Board of Missions
for the Pacific Islands (UCC)

Cooperating Organizations

Catholic Charities Hawaii
Catholic Diocese of Honolulu
Chamber of Commerce of Honolulu
Hawaii Bankers Association
Hawaii Business Roundtable
Hawaiian Humane Society
Hawaii State Parent Teacher
Student Association

COMMITTEE ON JUDICIARY

Rep. Karl Rhoads, Chair

Rep. Joy A. San Buenaventura, Vice Chair

Friday, March 27, 2015

3:00 p.m.

Conference Room 325

The Hawai'i Coalition Against Legalized Gambling supports SB148, SD1. The purpose of the bill is to amend Section 712-1270 of Hawaii Revised Statutes to include Part III Gambling Offenses to the list of other criminal offenses that can be terminated under Part V Nuisance Abatement.

Under this bill the Honolulu Police Department will be able to remind land owners and lessors of their duty to be aware of and stop their properties from being used for illegal gambling activities by citing the Nuisance Abatement law. Private citizens will also be enabled to initiate legal action under this law.

According to HPD illegal gambling rooms are used to distribute narcotics and have been the site of violent acts including more than one incidence of homicide.

Enactment of this legislation will give Law Enforcement a tool to rectify the current situation of land owners and lessors who fail to take action to remove illegal gambling activities from their property.

The Hawai'i Coalition Against Legalized Gambling urges the Committee on Judiciary to Pass SB148, SD1.

Respectfully submitted,

Dianne F. Kay, President
Hawai'i Coalition Against Legalized Gambling



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HOUSE COMMITTEE ON JUDICIARY
Friday, MARCH 27, 2015, 3:00 p.m. Room 325

SB148, SD1: Offenses Against Public Health and Morals; Nuisance Abatement; Gambling

TESTIMONY

Susan Dursin, Legislative Committee, League of Women Voters of Hawaii

Chair Rhoads, Vice-Chair San Buenaventura, and Committee Members:

The League of Women Voters of Hawaii supports SB148, SD1, which would include gambling among types of offenses subject to the nuisance abatement laws.

Clearly, gambling is illegal and gambling rooms operate outside the law. However, shutting those rooms down often is difficult because landowners and landlords may be either unaware or complicit. This change enables law enforcement to advise landowners/landlords of their responsibilities in ensuring that no illegal activity occurs on their property.

Because illegal gambling activity can generate disagreement and even violence, neighbors are often negatively impacted. They worry for themselves and for their children. With this law, an individual may take action.

One of the problems with violations such as gambling rooms is that they are hard to target and hard to stop. Law enforcement simply does not have enough personnel to search continually for violators and monitor their actions. This proposed change in the law would widen the pool of people who may take steps to end illegal activity. It puts one more tool in the hands of law enforcement, enabling them to carry out their responsibilities more effectively. We urge you to support this bill.

Thank you for the opportunity to provide testimony.